

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NIDEC CORPORATION,  
Plaintiff,

No. C 05-0686 SBA

v.

**ORDER**

VICTOR COMPANY OF JAPAN, LTD., et al.,  
Defendants.

[Docket Nos. 48, 61, 73]

On January 25, 2006, Plaintiff and Counter-Defendant Nidec Corporation, Defendants and Counter-Plaintiffs Victor Company of Japan, Ltd., JVC Components (Thailand) Co., Ltd., and Defendants Agilis Inc. and Agilis Technology Inc. participated in a Case Management Conference. The Court issued its Pretrial Scheduling Order ("Pretrial Order") on January 26, 2005. In the Pretrial Order, the Court scheduled a claim construction hearing for July 6, 2006, and set other deadlines affecting claim construction.

On March 2, 2006, five weeks after the Case Management Conference, Plaintiff filed with the Court a Motion for Summary Judgment of Non-Infringement of U.S. Patent No. 5,453,973. The Motion was noticed for an April 11, 2006 hearing. In the Motion for Summary Judgment, Plaintiff asks the Court to construe two terms from U.S. Patent No. 5,453,973.

On March 8, 2006, Defendants filed a Miscellaneous Administrative Request to (1) Strike Nidec Corporation's Motion for Summary Judgment of Non-Infringement, or (2) Have the Claim Construction Issues Raised by Nidec's Motion Adjourned to July 6, 2006 at the Scheduled Claim Construction Hearing and Have the Remainder of the Motion of Summary Judgment Be Heard after the Court Has Ruled on the Claim Construction Issues and Nidec Corporation Has Provided the Discovery Sought by Defendants. In the Administrative Request, Defendants ask the Court to either strike Plaintiff's Motion for Summary Judgment, or to defer consideration of the claim construction issues presented by that Motion until the July 6, 2006 claim construction hearing and defer consideration of the application of

1 the claims to the accused products until after discovery on such issues has been completed and the Court  
2 has issued its ruling on claim construction.

3 On March 13, 2006, Plaintiff filed its opposition to Defendants' Administrative Request. On  
4 March 14, 2006, Defendants filed a reply in support of its Administrative Request. On March 15, 2006,  
5 Plaintiff filed an Administrative Request for Leave to File Nidec Corporation's Sur-Reply in Support  
6 of Its Opposition to Defendants' Miscellaneous Administrative Request to Strike Nidec's Motion for  
7 Summary Judgment or Continue Hearing until after Claim Construction and Discovery.

8 Having considered Defendants' Administrative Request, and the reasons set forth therein, the  
9 Court finds that Plaintiff's Motion for Summary Judgment is premature. This Court specifically  
10 discussed scheduling issues with the parties at the January 25, 2006 Case Management Conference and,  
11 based on that discussion, determined that claim construction should be heard by the Court on July 6,  
12 2006. Defendants have not identified a single event that has occurred since the January 25, 2006 Case  
13 Management Conference that would alter this Court's conclusion that the dates set forth in the current  
14 Pretrial Order with respect to the claim construction procedures are reasonable. To the extent Plaintiff  
15 wanted to have the Court construe some of the claims earlier than July 6, 2006, Plaintiff should have  
16 brought this consideration to the Court's attention during the Case Management Conference. Further,  
17 the Court finds that performing claim construction piece-meal is not the most efficient use of the Court's  
18 resources.

19 Accordingly,

20 IT IS HEREBY ORDERED THAT Defendants' Miscellaneous Administrative Request to (1)  
21 Strike Nidec Corporation's Motion for Summary Judgment of Non-Infringement, or (2) Have the Claim  
22 Construction Issues Raised by Nidec's Motion Adjourned to July 6, 2006 at the Scheduled Claim  
23 Construction Hearing and Have the Remainder of the Motion of Summary Judgment Be Heard after the  
24 Court Has Ruled on the Claim Construction Issues and Nidec Corporation Has Provided the Discovery  
25 Sought by Defendants [Docket No. 61] is GRANTED in part.

26 IT IS FURTHER ORDERED THAT the hearing on Plaintiff's Motion for Summary Judgment  
27 is CONTINUED from April 11, 2006 to September 12, 2006 at 1:00 p.m. Plaintiff's Motion for  
28 Summary Judgment of Non-Infringement of U.S. Patent No. 5,453,973 [Docket No. 48] and all briefing

1 that relates to such motion are STAYED until July 25, 2006, at which time Defendants will file their  
2 opposition to Plaintiff's Motion for Summary Judgment. Plaintiff's reply in support of its Motion for  
3 Summary Judgment is due on August 8, 2006. The Court may, in its discretion, adjudicate the Motion  
4 without a hearing, in which case the Clerk will notify the parties that no appearance is necessary.  
5 Except for the briefing schedule expressly set forth herein, the parties may not alter the deadlines set  
6 forth herein or file any further documents concerning Plaintiff's Motion for Summary Judgment without  
7 first seeking leave of Court and demonstrating the existence of good cause.

8 IT IS FURTHER ORDERED THAT Plaintiff's Administrative Request for Leave to File Nidec  
9 Corporation's Sur-Reply in Support of Its Opposition to Defendants' Miscellaneous Administrative  
10 Request to Strike Nidec's Motion for Summary Judgment or Continue Hearing until after Claim  
11 Construction and Discovery [Docket No. 73] is DENIED as moot.

12 IT IS SO ORDERED.

13  
14 Dated: 3/17/06

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge